

United States Court of Appeals,
Eleventh Circuit.

No. 94-2050.

HILLSBOROUGH COUNTY HOSPITAL AUTHORITY, d/b/a Tampa General
Hospital, et al., Plaintiffs-Appellants,

v.

Donna E. SHALALA, Secretary, United States Department of Health
and Human Services, Defendant-Appellee.

April 19, 1995.

Appeal from the United States District Court for the Middle
District of Florida. (No. 91-12-CIV-T-21(B), Ralph W. Nimmons, Jr.,
Judge.

Before DUBINA, Circuit Judge, RONEY and ESCHBACH*, Senior Circuit
Judges.

PER CURIAM:

Plaintiffs, approximately 114 acute care hospitals ("the
Hospitals") belonging to the Florida Hospital Association, appeal
the district court's grant of summary judgment in favor of the
Secretary of Health and Human Services ("the Secretary") denying
the Hospitals' claim that they were entitled to an adjustment in
their Medicare reimbursements based on the "extraordinary
circumstances" exception of 42 U.S.C. § 1395ww(b)(4)(A).
Specifically, the district court upheld the Secretary's
determination that § 1395ww(b)(4)(A) was not incorporated into 42
U.S.C. § 1395ww(d), Medicare's Prospective Payment System (PPS).
We affirm.

This particular issue of statutory interpretation has already
been addressed by three of our sister circuits. Both the D.C.

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for
the Seventh Circuit, sitting by designation.

Circuit and the Third Circuit have held that the Secretary could reasonably conclude that Congress did not incorporate the "extraordinary circumstances" exception of § 1395ww(b)(4)(A) into the PPS. *Episcopal Hospital v. Shalala*, 994 F.2d 879, 884 (D.C.Cir.1993), cert. denied, --- U.S. ----, 114 S.Ct. 876, 127 L.Ed.2d 73 (1994); *Sacred Heart Medical Center v. Sullivan*, 958 F.2d 537, 550 (3rd Cir.1992). In examining the plain language of the PPS statute, these courts point out that § 1395ww(d)(1) makes no reference to § 1395ww(b)(4)(A), even though it expressly refers to § 1395ww(b)(3)(A), and, furthermore, the PPS contains its own list of exceptions in § 1395ww(d)(5), eliminating any need to incorporate § 1395ww(b)(4)(A)'s exception. See *Episcopal*, 994 F.2d at 883; *Sacred Heart*, 958 F.2d at 545. The *Sacred Heart* court also notes that the legislative history supports the Secretary's determination that Congress did not intend to incorporate § 1395ww(b)(4)(A) into the PPS. *Id.*, 958 F.2d at 547. Although the Ninth Circuit has expressed a contrary view on this issue, see *Community Hospital of Chandler v. Sullivan*, 963 F.2d 1206, 1214 n. 4 (9th Cir.1992), we nonetheless find the reasoning of the D.C. and Third Circuits persuasive. We therefore AFFIRM the judgment of the district court.